

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 JOEY GIUNTOLI, LLC, a New York
11 limited liability company, qualified to do
and doing business in California ,

12 Plaintiff,

13 vs.

14 ULTRACOR, INC., a California
15 corporation; MICHAEL BALL, an
individual, CHRISTINA WAGELING, an
individual,

16 Defendant.
17

Case No. 2:18-cv-03438 DSF (PJWx)

**STIPULATED PROTECTIVE
ORDER; AND ORDER THEREON**

18 Plaintiff Joey Giuntoli, LLC, (“Giuntoli”), Defendant Ultracor, Inc.
19 (“Ultracor”), and Non-Party SoulCycle Inc. (“Soulcycle), appearing by and through
20 their respective undersigned counsel, hereby stipulate to the following terms of the
21 protective order in this case, namely *Joey Giuntoli, LLC v. Ultracor, Inc.*, United
22 States District Court, Central District Case No. 2:18-cv-03438 DSF (PJWx) (the
23 “Action”)

24 **1. A. PURPOSES AND LIMITATIONS**

25 Discovery in this action is likely to involve production of confidential,
26 proprietary, or private information for which special protection from public
27 disclosure and from use for any purpose other than prosecuting this litigation may be
28 warranted. Accordingly, the parties and subpoenaed Non-Party SoulCycle Inc.

1 (“SoulCycle”) hereby stipulate to and petition the Court to enter the following
2 Stipulated Protective Order. The parties acknowledge that this Order does not confer
3 blanket protections on all disclosures or responses to discovery and that the protection
4 it affords from public disclosure and use extends only to the limited information or
5 items that are entitled to confidential treatment under the applicable legal principles.
6 The parties further acknowledge, as set forth in Section 12.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential information
8 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
9 the standards that will be applied when a party seeks permission from the court to file
10 material under seal.

11 **B. GOOD CAUSE STATEMENT**

12 SoulCycle was served with a Subpoena to Testify At a Deposition in a Civil
13 Action, dated August 21, 2018 (“Subpoena”) by Plaintiff Joey Giuntoli, LLC
14 (“Plaintiff”). Documents and testimony responsive to the Subpoena include valuable
15 financial and/or proprietary information for which special protection from public
16 disclosure is warranted, and use for any purpose other than prosecution of this action
17 should not be warranted. Such confidential and proprietary materials and information
18 consist of, among other things, confidential business and financial information and
19 commercial information, and implicate the privacy rights of SoulCycle which is a
20 third party. This information is otherwise generally unavailable to the public and
21 may be privileged or otherwise protected from disclosure under state or federal
22 statutes, court rules, case decisions, or common law. Accordingly, to expedite
23 compliance with the Subpoena, the flow of information, and to facilitate the prompt
24 resolution of disputes over confidentiality of discovery materials, to adequately
25 protect information the parties are entitled to keep confidential, to ensure that the
26 parties are permitted reasonable necessary uses of such material in preparation for
27 and in the conduct of trial, to address their handling at the end of the litigation, and
28 serve the ends of justice, a protective order for such information is justified in this

1 matter. It is the intent of the parties and SoulCycle that information will not be
2 designated as confidential for tactical reasons and that nothing be so designated
3 without a good faith belief that it has been maintained in a confidential, non-public
4 manner, and there is good cause why it should not be part of the public record of this
5 case.

6 **2. DEFINITIONS**

7 2.1 Action: this pending federal law suit entitled *Joey Giuntoli, LLC v.*
8 *Ultracor, Inc., etc., et al.*, Civil Action No. 2-18-cv-03438-DSF-PJW.

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
12 it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
14 Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
16 support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party or Non-Party
28 subject to a subpoena in this Action. House Counsel does not include Outside

1 Counsel of Record or any other outside counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party or
5 Non-Party to this Action but are retained to represent or advise a party or Non-Party
6 to this Action and have appeared in this Action on behalf of that party or Non-Party
7 or are affiliated with a law firm which has appeared on behalf of that party or Non-
8 Party, and includes support staff.

9 2.11 Party: any party to this Action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their
11 support staffs).

12 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this Action.

14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)
17 and their employees and subcontractors.

18 2.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL.”

20 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 **3. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
26 compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or Non-Parties or their Counsel that might reveal Protected
28 Material. Any use of Protected Material at trial shall be governed by the orders of the

1 trial judge. This Order does not govern the use of Protected Material at trial.

2 **4. DURATION**

3 Even after final disposition of this litigation, the confidentiality obligations
4 imposed by this Order shall remain in effect until a Designating Party agrees
5 otherwise in writing or a court order otherwise directs. Final disposition shall be
6 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
7 or without prejudice; and (2) final judgment herein after the completion and
8 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
9 including the time limits for filing any motions or applications for extension of time
10 pursuant to applicable law.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
13 Party or Non-Party that designates information or items for protection under this
14 Order must take care to limit any such designation to specific material that qualifies
15 under the appropriate standards. The Designating Party must designate for protection
16 only those parts of material, documents, items, or oral or written communications that
17 qualify so that other portions of the material, documents, items, or communications
18 for which protection is not warranted are not swept unjustifiably within the ambit of
19 this Order. Mass, indiscriminate, or routinized designations are prohibited.

20 Designations that are shown to be clearly unjustified or that have been made for an
21 improper purpose (e.g., to unnecessarily encumber the case development process or
22 to impose unnecessary expenses and burdens on other parties) may expose the
23 Designating Party to sanctions. If it comes to a Designating Party's attention that
24 information or items that it designated for protection do not qualify for protection,
25 that Designating Party must promptly notify all other Parties that it is withdrawing
26 the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated

1 or ordered, Disclosure or Discovery Material that qualifies for protection under this
2 Order must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins). A Party or Non-Party that makes original documents
11 available for inspection need not designate them for protection until after the
12 inspecting Party has indicated which documents it would like copied and produced.
13 During the inspection and before the designation, all of the material made available
14 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
15 identified the documents it wants copied and produced, the Producing Party must
16 determine which documents, or portions thereof, qualify for protection under this
17 Order. Then, before producing the specified documents, the Producing Party must
18 affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If
19 only a portion or portions of the material on a page qualifies for protection, the
20 Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, before the close of the deposition all
24 protected testimony.

25 (c) for information produced in some form other than documentary and for any
26 other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information is stored the legend
28 “CONFIDENTIAL.” If only a portion or portions of the information warrants

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the
5 Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process under Local Rule 37.1 et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
18 expose the Challenging Party to sanctions. Unless the Designating Party has waived
19 or withdrawn the confidentiality designation, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing
21 Party's designation until the Court rules on the challenge.

22 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this
25 Action only for prosecuting, defending, or attempting to settle this Action. Such
26 Protected Material may be disclosed only to the categories of persons and under the
27 conditions described in this Order. When the Action has been terminated, a Receiving
28 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location
2 and in a secure manner that ensures that access is limited to the persons authorized
3 under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving
6 Party may disclose any information or item designated “CONFIDENTIAL” only to:
7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this Action; (b) the officers, directors, and employees
10 (including House Counsel) of the Receiving Party to whom disclosure is reasonably
11 necessary for this Action; (c) Experts (as defined in this Order) of the Receiving Party
12 to whom disclosure is reasonably necessary for this Action and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A); (d) the court and its
14 personnel; (e) court reporters and their staff; (f) professional jury or trial consultants,
15 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
16 for this Action and who have signed the “Acknowledgment and Agreement to Be
17 Bound” (Exhibit A); (g) the author or recipient of a document containing the
18 information or a custodian or other person who otherwise possessed or knew the
19 information; (h) during their depositions, witnesses ,and attorneys for witnesses, in
20 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
21 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
22 will not be permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may be
26 separately bound by the court reporter and may not be disclosed to anyone except as
27 permitted under this Stipulated Protective Order; and (i) any mediator or settlement
28 officer, and their supporting personnel, mutually agreed upon by any of the parties

1 engaged in settlement discussions.

2 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
3 **PRODUCED IN OTHER LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation
5 that compels disclosure of any information or items designated in this Action as
6 “CONFIDENTIAL,” that Party must: (a) promptly notify in writing the Designating
7 Party. Such notification shall include a copy of the subpoena or court order; (b)
8 promptly notify in writing the party who caused the subpoena or order to issue in the
9 other litigation that some or all of the material covered by the subpoena or order is
10 subject to this Protective Order. Such notification shall include a copy of this
11 Stipulated Protective Order; and (c) cooperate with respect to all reasonable
12 procedures sought to be pursued by the Designating Party whose Protected Material
13 may be affected. If the Designating Party timely seeks a protective order, the Party
14 served with the subpoena or court order shall not produce any information designated
15 in this action as “CONFIDENTIAL” before a determination by the court from which
16 the subpoena or order issued, unless the Party has obtained the Designating Party’s
17 permission. The Designating Party shall bear the burden and expense of seeking
18 protection in that court of its confidential material and nothing in these provisions
19 should be construed as authorizing or encouraging a Receiving Party in this Action to
20 disobey a lawful directive from another court.

21 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
22 **PRODUCED IN THIS LITIGATION**

23 (a) The terms of this Order are applicable to information produced by a Non-
24 Party in this Action and designated as “CONFIDENTIAL.” Such information
25 produced by Non-Parties in connection with this litigation is protected by the
26 remedies and relief provided by this Order. Nothing in these provisions should be
27 construed as prohibiting a Non-Party from seeking additional protections.

28 (b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is
2 subject to an agreement with the Non-Party not to produce the Non-Party's
3 confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party
5 that some or all of the information requested is subject to a confidentiality
6 agreement with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Stipulated
8 Protective Order in this Action, the relevant discovery request(s), and a
9 reasonably specific description of the information requested; and

10 (3) make the information requested available for inspection by the Non-
11 Party, if requested.

12 (c) If the Non-Party fails to seek a protective order from this court within 14
13 days, or a shorter, reasonable period if Receiving party is subject to a Court Order,
14 of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request.
16 If the Non-Party timely seeks a protective order, the Receiving Party shall not
17 produce any information in its possession or control that is subject to the
18 confidentiality agreement with the Non-Party before a determination by the court.
19 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
20 of seeking protection in this court of its Protected Material.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately

25 (a) notify in writing the Designating Party of the unauthorized disclosures,

26 (b) use its best efforts to retrieve all unauthorized copies of the Protected
27 Material,

28 (c) inform the person or persons to whom unauthorized disclosures were made

1 of all the terms of this Order, and

2 (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection,
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order that provides for production without prior
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
12 parties reach an agreement on the effect of disclosure of a communication or
13 information covered by the attorney-client privilege or work product protection, the
14 parties may incorporate their agreement in the stipulated protective order submitted to
15 the court.

16 **12. MISCELLANEOUS**

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order no Party or Non-Party waives any right it otherwise would have to
21 object to disclosing or producing any information or item on any ground not
22 addressed in this Stipulated Protective Order. Similarly, no Party or Non-Party
23 waives any right to object on any ground to use in evidence of any of the material
24 covered by this Protective Order.

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
27 only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information in
2 the public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in paragraph 4, within 60
5 days of a written request by the Designating Party, each Receiving Party must return
6 all Protected Material to the Producing Party or destroy such material. As used in this
7 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving
10 Party must submit a written certification to the Producing Party (and, if not the same
11 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
12 (by category, where appropriate) all the Protected Material that was returned or
13 destroyed and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or any other format reproducing or capturing any
15 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
16 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
18 reports, attorney work product, and consultant and expert work product, even if such
19 materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Section 4 (DURATION). Any violation of this Order may be punished by any and all
2 appropriate measures including, without limitation, contempt proceedings and/or
3 monetary sanctions.
4

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
6

7 DATED: October 5, 2018

8 /s/ Joseph S. Fischbach
9 Joseph S. Fischbach
10 Attorneys for Plaintiff Joey Giuntoli, LLC
11

12 DATED: October 5, 2018


13 /s/ J.T. Fox
14 J.T. Fox
15 Attorneys for Defendant Ultracor, Inc.
16

17 DATED: October 5, 2018

18 /s/ Abirami Gnanadesigan
19 Abirami Gnanadesigan
20 Attorneys for Non-Party SoulCycle Inc.
21

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
23

24 DATED: October 8, 2018

25 
26 _____
27 Honorable Patrick J. Walsh
28 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California
7 on [date] in the case of _____ **[insert formal name of the case and the**
8 **number and initials assigned to it by the court]**. I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print
18 or type full name] of _____ [print or type
19 full address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____